

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 15 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CRAYTONIA D. SR.,)	2 CA-JV 2011-0062
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and CRAYTONIA D. JR.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD201000015

Honorable Joseph R. Georgini, Judge

AFFIRMED

Ritter Law Group, L.L.C.
By Matthew Ritter

Florence
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General
By Amanda Holguin

Mesa
Attorneys for Appellee Arizona
Department of Economic Security

B R A M M E R, Judge.

¶1 Craytonia D. Sr., father of Craytonia D. Jr., born in February 2008, appeals from the juvenile court's June 2011 order terminating his parental rights on the grounds of abandonment, A.R.S. § 8-533(B)(1), and his conviction of a felony and resulting imprisonment, § 8-533(B)(4). Craytonia seems to be challenging the court's finding that termination of his parental rights was in Craytonia Jr.'s best interest. For the reasons stated below, we affirm.

¶2 Pursuant to a plea agreement, Craytonia was convicted in June 2009 of armed robbery for a crime he had committed in June 2008 and was sentenced to 4.5 years' imprisonment. Craytonia remained incarcerated after his arrest. Thus, Craytonia Jr. was about four months old when his father committed the robbery and was incarcerated and just over a year old when Craytonia was convicted and sentenced to prison. In May 2010 Craytonia Jr. was removed from his mother's custody because of reports of abuse and neglect and the Arizona Department of Economic Security (ADES) was substituted as the petitioner in a private dependency proceeding that had been commenced a few months earlier by the child's grandmother. Craytonia Jr. was adjudicated dependent as to both parents and the juvenile court ordered ADES to provide the family with reunification services. Although ADES determined Craytonia Jr. was too young to participate in supervised visits at the prison, the case manager urged Craytonia to write letters to the child and encouraged him to take advantage of any services offered in prison, which included substance-abuse counseling and classes on parenting, domestic violence, and anger management.

¶3 After a permanency planning hearing on January 19, 2011, however, the juvenile court granted ADES's request to change the case plan from reunification to

severance and adoption and directed ADES to file a motion to terminate both parents' rights to Craytonia Jr. ADES filed the motion on February 8, seeking to terminate Craytonia's rights based on abandonment and his felony conviction and prison term. The court granted ADES's motion after a hearing in April, issuing factual findings from the bench and executing the final order, which contained findings of fact and conclusions of law, on June 20, 2011.¹

¶4 At the end of the hearing, the juvenile court made extensive findings of fact on the record. The court stated it believed Craytonia had been involved in gang activity, which contributed to his decision to commit criminal offenses in 2008. The court added that the "ramifications" of Craytonia's poor choices were his conviction and imprisonment and pointed out he had a maximum release date of December 2012. Noting correctly that "in some cases you can't find abandonment when there's incarceration," the court found, "in this case I can and I feel that I have to." The court specified Craytonia had failed to provide financial support for Craytonia Jr., had not had any "real communication with him," and any reunification services Craytonia had completed had not "really" made him "a better dad." Using the language of § 8-533(B)(1) and (B)(4), the court found ADES had presented clear and convincing evidence of both statutory grounds for terminating Craytonia's parental rights.

¶5 The juvenile court also stated that because of Craytonia Jr.'s age, there had been no opportunity for him to develop a relationship with his father. The court said to Craytonia, "[T]here's been no true attempt to nurture that relationship since you have been incarcerated." The court explained the prison term had been and would continue to

¹Although the mother relinquished her parental rights, the court terminated her rights based on length of time in care as well.

be “a detriment” to Craytonia Jr. and to Craytonia’s relationship with him. The court found it was not in Craytonia Jr.’s best interest to wait for his father’s release from prison, concluding the child would benefit from the termination of his parents’ rights because he needed permanency. The court said, “I am going to try to give your son an opportunity . . . to be raised in a home with people that love him and that can provide for him.” As directed, ADES subsequently submitted, and the court signed, a written form of judgment.

¶6 On appeal from the final order, Craytonia seems to be challenging the court’s conclusion that termination of his rights was in Craytonia Jr.’s best interest. Summarizing the issue he purports to raise, he contends in one portion of the opening brief that there was “no evidence . . . of Appellant-Father’s prospective inability to parent subsequent to release from incarceration or that further services would have been futile.” In the body of his argument, however, he seems to expand this argument, claiming ADES failed to establish it had made reasonable efforts to reunify the family, “provide rehabilitative services,” and demonstrate “further services would be futile.” And he also apparently asserts ADES did not present sufficient evidence to establish that it would be in Craytonia Jr.’s best interest to terminate Craytonia’s parental rights.

¶7 The juvenile court may sever a parent’s rights if clear and convincing evidence establishes that at least one of the statutory grounds for termination exists, *see* Ariz. R. P. Juv. Ct. 66(C); *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004), and that a preponderance of the evidence shows terminating the parent’s rights is in the child’s best interests, *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We review the termination order and the record before

us in the light most favorable to sustaining the court's decision and will affirm it unless we conclude "as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009), *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (alteration in *Denise R.*). If there is reasonable evidence in the record supporting the factual findings upon which the order is based, we will not disturb that order. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶8 To the extent Craytonia is challenging the sufficiency of the evidence to support the juvenile court's finding that termination of his parental rights was in Craytonia Jr.'s best interest, we reject his challenge. In order to establish that severance of a parent's rights is in the child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18, 972 P.2d 684, 689 (App. 1998). As noted above, the court found termination of Craytonia's rights would benefit Craytonia Jr. because the child needed permanency and depriving him of a potentially loving, stable home would be detrimental. The record contains an abundance of evidence that supports these and other findings upon which the court based its conclusion that termination of Craytonia's rights would be in Craytonia Jr.'s best interest, some of which we discuss below.

¶9 As the juvenile court noted and the record established, there was no relationship between Craytonia and Craytonia Jr. and thus no bond to break by severing Craytonia's rights. As we previously pointed out, Craytonia Jr. was four months old

when Craytonia was arrested and incarcerated and Craytonia was still in prison at the time of the severance hearing. Based on an anticipated release date of December 2012, he had a year and a half of imprisonment left. In addition, efforts had been and continued to be made to find a relative placement and to place Craytonia Jr. with his half brother, John C. Jr., whose parents' rights had also been severed. The ADES case manager testified that Craytonia had no relationship with his son. He had last communicated with Craytonia Jr. in February 2011, in a telephone call the case manager had arranged, but the case manager knew of no other contact between them of any kind. Craytonia testified he had sent the child a birthday card for his first birthday. The case manager stated, and Craytonia admitted, Craytonia since his imprisonment had never provided any support for the child, although he insisted he had provided some support during the brief period before that. And, the case manager testified she had communicated information about Craytonia Jr. to Craytonia, including what was expected of him in terms of fulfilling the case plan and obtaining services at ADOC. Although Craytonia testified he had attended classes for earning the equivalent to a high school diploma, substance abuse treatment, and a class on cultural diversity, the case manager testified she never received any information establishing he had participated in any services. She stated he had done "nothing" while in prison to establish or maintain a parent-child bond. And when asked about the possibility of Craytonia providing a suitable home for Craytonia Jr. upon his anticipated release from prison in December 2012, the case manager stated she saw little chance of that happening, noting he had never had a stable home or stable employment.

¶10 The case manager further testified Craytonia Jr. is healthy and adoptable, a suitable home was being sought after relative placements were considered, and ADES

was trying to place him with his half brother. She stated Craytonia Jr. would benefit from the termination of his parents' rights because he would be freed for adoption and that would provide him with permanency. And, she stated, not terminating his parents' rights would deprive him of that opportunity and leave him in the custody of Child Protective Services, "basically living in limbo." At the end of the severance hearing, the juvenile court directed ADES to conduct a home study of the paternal grandparents and pursue other placements if that proved not to be the best placement for him. There was ample evidence, therefore, to sustain the court's finding that termination of Craytonia's rights to Craytonia Jr. was in the child's best interest.

¶11 Although Craytonia raises issues concerning reunification services, he has not demonstrated how such issues relate to the juvenile court's best-interest finding. Craytonia's speculation that he might benefit from services once he is released from prison does not negate the fact that at the time of the severance hearing the court had before it an incarcerated father whose release date was a year and a half away and who had no bond with a child who was adoptable and in need of a permanent, stable home. Even assuming, without deciding, that Craytonia has pointed to some evidence that might establish a benefit to continuing the parent-child relationship, we do not reweigh the evidence. Rather, we defer to the juvenile court with respect to any factual findings because as the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d at 945. It is for that court, not this court, to assess the credibility of witnesses before it and weigh the evidence presented. *Id.* And to the extent

there were conflicts in the evidence, the juvenile court must resolve them. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶12 Although as we previously stated, Craytonia seems to be challenging only the best-interest finding, his suggestion ADES failed to provide reasonable and appropriate reunification services is perhaps a challenge to the sufficiency of the evidence to support the statutory grounds for terminating his rights. To the extent that is the case, the arguments regarding services are wholly lacking in merit. When ADES seeks termination of a parent's rights on the ground that the parent has abandoned his or her child, it is not required to demonstrate it provided the parent with reunification services. *See Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 11, 200 P.3d 1003, 1007 (App. 2008) ("[N]either § 8-533 nor federal law requires that a parent be provided reunification services before the court may terminate the parent's rights on the ground of abandonment."); *see also Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, ¶ 15, 993 P.2d 462, 467 (App. 1999). Moreover, because Craytonia chose to engage in criminal activity resulting in his incarceration, he greatly limited ADES's ability to provide him with such services. Still, ADES encouraged him to obtain services provided by the ADOC and urged him to do what he could to establish a relationship with Craytonia Jr. Craytonia was unresponsive. Indeed, at the initially scheduled but ultimately continued permanency planning hearing in December 2010, the juvenile court warned Craytonia that if he failed to engage in reunification services his rights could be severed.

¶13 Thus, there was ample evidence supporting the statutory ground of abandonment as well as the best-interest finding. And because we may affirm a termination order so long as it is sustainable on at least one statutory ground, we need not

address the implications of Craytonia's broad arguments with respect to the remaining ground for termination of his rights, his conviction and resulting incarceration. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court's order terminating Craytonia's parental rights to Craytonia Jr., is affirmed.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge